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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re: CASE NO.: BK-N-20-50471-BTB  
Chapter 11 Subchapter V

ALY EATERY, INC.,

Debtors.

**MOTION FOR ORDER AUTHORIZING  
DEBTOR TO CONTINUE USING  
EXISTING BANK ACCOUNT**

Hearing Date: June 17, 2020  
Hearing Time: 2:00 p.m.

Debtor and Debtor in Possession, ALY EATERY, INC., hereby moves this Court for an order authorizing the Debtor to continue using its existing bank accounts and waive the requirement that Debtor maintain a specifically designated *debtor-in-possession* account (the “Motion”). This Motion is made pursuant to 11 U.S.C. §§ 105, 345 and 363, supported by the Declarations of Alicia Youngberg and Kevin Darby, Esq., and is based on the following points and authorities.

**POINTS AND AUTHORITIES**

1. On May 4, 2020, Debtor filed a voluntary petition for relief under Subchapter 5 of Chapter 11 of the Bankruptcy Code (the “Petition Date”).
  2. Debtor owns and operates a Subway Sandwiches franchise restaurant in Reno, Nevada.
  3. The franchisor for Subway Sandwiches is Doctor’s Associates, Inc. (“DAI”).
- Debtor’s Franchise Agreement with DAI obligates Debtor to pay DAI: (1) royalty payments in the

1 amount of 8% of the Debtor's gross sales; and (2) contributions to the Subway Franchise  
 2 Advertising Fund Trust in the amount of 4.5% of gross sales. DAI is entitled to direct access to  
 3 Debtor's bank account to take the 12.5% if Debtor's gross sales directly from Debtor's bank  
 4 account on a weekly basis.

5 4. Debtor maintains one business bank account at Bank of America, N.A. ("Debtor's  
 6 Bank Account").

7 5. The Office of the United States Trustee has established certain operating guidelines  
 8 for debtors-in-possession in order to supervise the administration of Chapter 11 cases. These  
 9 guidelines require a Chapter 11 debtor, among other things, to close all existing bank accounts and  
 10 open new debtor-in-possession bank accounts and obtain checks for all debtor-in-possession  
 11 accounts bearing the designation "Debtor-in- Possession," the bankruptcy case number, and the  
 12 type of accounts.

13 6. Debtor is informed and believes that the primary purpose of the debtor-in-possession  
 14 bank account requirement is to provide deposit insurance coverage in excess of maximum deposits  
 15 insured by the Federal Deposit Insurance Corporation ("FDIC") coverage limits. FDIC insurance  
 16 covers deposits up to \$250,000.00. See [www.fdic.gov/deposit/deposits/faq](http://www.fdic.gov/deposit/deposits/faq).

17 7. The balance of Debtor's Bank Account has never exceeded \$250,000.00, and it is  
 18 highly unlikely the account balance will reach \$250,000.00 during the pendency of this case.

19 8. After filing this case Debtor's Counsel contacted Bank of America, using the contact  
 20 information provided by the Office of the United States Trustee, to inquire about having debtor-in-  
 21 possession coverage added to Debtor's Bank Account. Bank of America declined and explained:

22 Please be advised Bank of America is still listed on the approved Banking  
 23 List with the EOUST for Debtor in Possession relationships. However, only  
 24 clients with an **existing Commercial Banking relationship with an**  
 25 **assigned banker will be serviced**. We will not open or service any Debtor in  
 Possession account for a consumer or small business relationship, whether an  
 existing client of Bank of America's or not.

26 See Declaration of Kevin A. Darby, Exhibit 1.

27 9. The Debtor seeks a waiver of the United States Trustee's requirement that the  
 28 prepetition Bank Accounts be closed and that new post-petition "debtor-in-possession" accounts be

1 opened. If enforced in this case, that requirement would cause unnecessary disruption in the  
2 Debtor's business and would cause the estate unnecessary expense for no benefit. At the same  
3 time, the requirement provides no benefit or protection to any interested party. The standard FDIC  
4 insurance coverage is more than adequate to protect the deposits in Debtor's Bank Account.

5 10. Given the fact this is a Subchapter V case, Debtor will be a debtor-in-possession for  
6 only a very limited period of time. Debtor is required to file a plan of reorganization by no later  
7 than August 3, 2020. *See* 11 U.S.C. §1189(b). The time, burden and expense required for Debtor  
8 to convert to a new bank account is not reasonable or warranted in light of Debtor's statutorily  
9 deemed short time as a debtor-in-possession.

10 11. The Debtor's Bank Account is already located at a United States Trustee-authorized  
11 depository institution, Bank of America, N.A. The existing account will serve the needs of the  
12 estate and the United States Trustee more than adequately. Therefore, good cause exists for this  
13 Court to authorize the Debtor's continued post-petition use of Debtor's Bank Account.

14 DATED this 20<sup>th</sup> day of May, 2020.

15 DARBY LAW PRACTICE, LTD.

16 */s/ Kevin A. Darby*

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KEVIN A. DARBY, ESQ.

18 Attorneys for Aly Eatery, Inc.  
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